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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,197	06/07/2002	Jian-Zhong Yang	AA422F	9251

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EXAMINER

SACKEY, EBENEZER O

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/070,197

Applicant(s)
JIAN-ZHONG YANG ET AL.

Examiner
EBENEZER SACKY

Art Unit
1626



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 22, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claims 1-11 are pending.

This is a response to applicants amendment A filed on 4/22/03.

Applicants have amended claim 1 to recite under (B) a gel matrix comprising a cationic surfactant containing one long chain alkyl group and a tertiary or quaternary amine group---, to more distinctly claim particular embodiments of the invention by claiming a particular cationic surfactant.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a

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background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-11 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Deckner et al. WO 95/03781 for the reasons set forth in paper number 6.

Applicants claim a hair care composition comprising a polypropylene glycol selected from the group consisting of a single polypropylene glycol-chain segment polymer, a multi-polypropylene glycol-chain segment polymer, and mixtures thereof, wherein the single-polypropylene glycol-chain segment polymer is of formula (I): $\text{HO}-(\text{C}_3\text{H}_6\text{O})_a\text{H}$, wherein "a" is a value from about 20 to about 100, and wherein the multipolypropylene glycol chain segment polymer is of the formula (III) and a gel matrix comprising a cationic

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surfactant containing one long chain alkyl group and a tertiary or quaternary amine group, a solid fatty compound and water.

Determination of the scope and content of the prior art (M.P.E.P. §2141.01)

Deckner et al. disclose a personal cleansing composition comprising a polypropylene glycol, a cationic surfactant containing a long chain alkyl group and a tertiary or quaternary amine group, a fatty compound, and water. See the entire publication, especially page 19, lines 19-35, (e.g., cetyl dimethyl ammonium, stearyl trimethyl ammonium etc) page 14, lines 31-34; page 15, lines 18-35; page 26, 24-35, example's 1, II, IV etc.

Ascertainment of the difference between the prior art and the claims (M.P.E.P. §2141.02)

The instant claims differ from the prior art in claiming a hair composition with the stipulated ingredients with one long chain alkyl group whereas the prior art discloses a cleaning composition comprising the claimed formulation and additional ingredients including the long chain alkyl group. However, the prior art teaches that the composition can have various uses and additional ingredients. See page 10, lines 14-16.

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Additionally, applicants use of "comprising," an open-ended word in defining the claims does not preclude the addition of other ingredients into the composition.

Finding of prima facie obviousness---rational and motivation (M.P.E.P.. §2142-2143)

Since the prior art teaches a similar composition, one of ordinary skill in the art would thus have been motivated to prepare compositions containing long chain alkyl groups which can be used in the cleaning industry absent a showing of unexpected results or properties. Moreover, the intended use of a composition is given no patentable weight. A composition is a composition. Claims 2 and 3 refer to the composition reducing flyaway and bulk area by 25% and 10% respectively. The reference discloses that polypropylene glycol is useful as a humectant and deposition aiding polymers, which therefore, reduces the flyaway and bulk areas. See page 26, lines 24-35; page 36, lines 7-24. Claim 6 also require the composition to further comprise a hydrophobically modified cellulose ether. The reference discloses compositions comprising from 0% to about 10% of a polymeric thickener, such as an alkyl modified

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hydroxyalkylcellulose. See page 27, lines 15-29. Therefore, the instantly claimed composition would have been obvious to one of ordinary skill in the art absent a showing of unexpected results.

Response to Amendment

Applicant's arguments filed 4/22/03 have been fully considered but they are not persuasive. Applicants argue that Deckner et al., fails to establish a prima facie case of obviousness because claim 1, as now amended incorporates a cationic surfactant containing one long chain alkyl group and a tertiary or quaternary amine which is not taught by Deckner et al., the Examiner disagrees because contrary to applicants assertion, Deckner et al., discloses the use of long chain alkyl group and a tertiary or quaternary amine group. See page 19, lines 19-35 which discloses various surfactant that can be employed in the composition. Applicants next argue that amended claim 1 now requires a mono-long alkyl cationic surfactant which provides a superior conditioning benefits on wet hair when compared to the di-long alkyl cationic surfactant such as DSDMAC. Deckner et al., teach not only di-long alkyl cationic surfactant but also mono-long alkyl

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cationic surfactant. Again, see page 19, lines 19-35. Applicants further argue that the instant hair composition provides an improved spreadability on wet hair and such an improvement is not suggested by Deckner et al. This argument is unpersuasive because a composition, is a composition and therefore, the intended use is given no patentable weight.

Applicants next argue that Deckner et al., does not specifically disclose a hair care composition nor does it teach benefits in hair care composition and therefore there is no motivation in Deckner et al., to select a mono-long alkyl cationic surfactant among a variety of surfactant disclosed. As stated in the previous office action, the "actives" in Deckner et al., composition provides for more than one use and again, a composition is just a composition regardless of the intended use and, Deckner also discloses not only di-long alkyl surfactant but also mono-long alkyl surfactant. See also page 10, lines 14-16. Applicants further argue that all of the cationic surfactant exemplified by Deckner et al., are di-long alkyl cationic surfactant which teaches away from the present invention. This is unpersuasive because a reference is not limited to what it exemplifies but

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rather to what it adequately discloses. Applicants next argue that unexpected results for the specific components were not achieved through routine experimentation and thus, one of ordinary skill would not have been led to the present invention from any of the disclosure of Deckner et al. The examiner disagrees because there ample evidence of record to direct the skilled artisan from the disclosure of Deckner et al. Any unexpected results may need to put in the form of a 132 declaration. For the reasons of record, the rejection of claims 1-11 is being maintained.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEP. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on

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the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone number is (703) 305-6889. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (703) 308-4537. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

EOS

June 2, 2003

(fw)

Joseph K. McKane

Supervisory Patent Examiner



6/2/03

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